

February 14, 2000

D.T.E. 00-22

Complaint filed by Sherrin Gallagher, pursuant to G.L. c. 93, § 108 et seq., with the Department of Telecommunications and Energy for a finding that her long distance telephone service was switched to AT&T Communications of New England, Inc., without authorization.

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APPEARANCES: Sherrin Gallagher

Eight Hallowell Road

Foxborough, Massachusetts 02035

Complainant

David Fagundus

Albert F. Stone

Law and Government Affairs

AT&T Communications of New England, Inc.

99 Bedford Street, Fourth Floor

Boston, Massachusetts 02111

Respondent

## I. INTRODUCTION

On October 6, 1999, Sherrin Gallagher ("Complainant"), pursuant to G.L. c. 93,

§ 108 et seq., filed a complaint with the Department of Telecommunications and Energy ("Department") alleging that AT&T Communications of New England, Inc. ("AT&T" or "Company") switched her long distance telephone service without authorization. In response to her complaint, AT&T stated that the switch of Ms. Gallagher's long distance service was authorized by Christopher Gallagher on July 21, 1999.

The Complainant challenged the veracity of AT&T's representation on January 3, 1999, and on February

1, 2000, pursuant to notice duly issued, the Department conducted an evidentiary hearing. Christopher Gallagher and Sherrin Gallagher testified on their own behalf. The Company sponsored the testimony of David Fagundas and Albert Stone, managers with the AT&T's government affairs division.

## II. POSITIONS OF THE PARTIES

### A. Complainant

The Complainant testified that she learned of the switch in her long distance telephone provider from MCI WorldCom to AT&T in August 1999, when she received letter from AT&T welcoming her as a customer (Tr. at 8-9). Ms. Gallagher testified that she contacted AT&T and was informed that the switch in her service was authorized by Christopher Gallagher on July 21, 1999, and confirmed by a third party verification ("TPV") company (*id.* at 9-10). Mr. Gallagher denied authorizing the switch in service (*id.* at 11-12).

### B. AT&T

AT&T stated that the switch in the Complainant's long distance service was authorized and that, in lieu of his signature, Mr. Gallagher provided an identification number of 0405 (Exh. AT&T-1). AT&T states that as a result of the TPV confirmation, they switched the Complainant's long distance service on July 23, 1999. The Complainant incurred charges of \$27.09 between July 23, 1999 and August 18, 1999 (*id.*).

## III. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary interexchange ("IXC") carrier shall be considered to have been authorized only if the IXC or local exchange carrier ("LEC") that initiated that change provides confirmation that the customer did authorize such change either through a signed LOA or oral confirmation of authorization obtained by a company registered with the department to provide third party verification services in the Commonwealth.

In AT&T Communications of New England, Inc., D.T.E. 98-94 (1998), the Department determined that to provide a valid TPV, AT&T must submit a written or electronic record that (1) identifies the person that received the telemarketing call; (2) delineates the authority of that person to approve a change in the IXC or LEC for a particular telephone line; and (3) identifies the new IXC or LEC. AT&T, D.T.E. 98-94, at 4.

## IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, § 110(i), the Department conducted a hearing to determine whether the change in Ms. Gallagher's long distance carrier was authorized. The Department notes that although AT&T claimed that the IXC switch was authorized and confirmed by a TPV company, they failed to comply with the Department's requirement to submit a written or electronic record that identified Mr. Gallagher as the person who received the telemarketing call or delineated whether he was authorized to approve the change in the Complainant's long distance telephone service to AT&T.

The Department finds that AT&T's failure to provide a valid TPV indicates that the switch in Ms. Gallagher's long distance service was not properly authorized.

In light of the evidence that AT&T switched Ms. Gallagher's long distance provider without proper authorization, in accordance with G.L. c. 93, § 112, the Department directs the Company to credit the

Complainant's account for the difference between the charges she owes to AT&T and the charges that Complainant would have paid to her original IXC, including any fees incurred in making the switch. AT&T shall also refund to Ms. Gallagher's previous long distance carrier all revenue that they would have received from Ms. Gallagher had the switch not taken place.<sup>(1)</sup>

- ORDER

Accordingly, after notice, hearing, consideration, and determination that AT&T Communications of New England, Inc. switched Sherrin Gallagher's long distance telephone service provider without authorization, it is hereby

ORDERED: That AT&T Communications of New England, Inc. shall comply with the directives contained in this Order; and it is

FURTHER ORDERED: That AT&T Communications of New England, Inc. shall submit to the Department within seven business days of the issuance of this order, an accounting of the refunds made to the Complainant and to the Complainant's previous interexchange carrier.

By Order of the Department,

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. An IXC determined by the Department to have intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, may be prohibited from selling telecommunications services in the Commonwealth for a period of up to one year. G.L. c. § 112(b).

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